

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 20th day of March, 2023.

James Renwick Manship,

Petitioner,

against Record No. 220718

Susan Beals, Commissioner, etc.,

Respondent.

Upon a Petition for Rehearing

On consideration of the petitioner's pleading titled "motion for rehearing," etc. received December 7, 2022 which is treated as a petition to set aside the judgment rendered herein on November 7, 2022, and grant a rehearing thereof, the prayer of the said petition is denied.

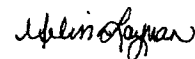
Upon consideration whereof, the relief requested in petitioner's February 1, 2023 and February 22, 2023 motions is denied.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:



Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 7th day of November, 2022.

James Renwick Manship, Petitioner,

against Record No. 220718

Susan Beals, Commissioner, etc., Respondent.

Upon a Petition for Writs of Mandamus and Prohibition

Upon consideration of the “Election Expedited Petition for Writ of Mandamus Emergency Petition to Testify to Grand Jury,” the Court is of the opinion the petition should be dismissed.

James Manship contends that “electronic vote counting computer tabulator scanner[s]” (“voting machines”) that will be used in tomorrow’s election are, for numerous reasons, unreliable and do not satisfy the requirements of Code § 24.2-629. Manship names Virginia’s Commissioner of Elections Susan Beals as the only respondent and asserts she has neglected her ministerial duties because she has not adequately addressed or banned the allegedly defective voting machines. As relief, Manship requests a writ of mandamus directing Commissioner Beals to (1) do a “PROPER REVIEW of Electronic Voting Systems in all 14 areas as detailed in” Code § 24.2-629; (2) do a “PROPER REVIEW of Electronic Voting Systems in relation to” information Manship asserts demonstrates the voting machines are faulty or unreliable; (3) hold an emergency meeting and vote to ban the use of the voting machines during the upcoming election; (4) and “communicate to the Voting Public that FRANCE with 48 million voters compared to 6 million in Virginia conducts HAND COUNT of PAPER BALLOTS on Election Day.” Additionally, Manship requests that, if Commissioner Beals and the Virginia Board of Elections (“the Board”) do not vote to ban the voting machines, this Court issue an injunction or a writ of prohibition forbidding their use and directing that tomorrow’s election be conducted using hand-counted, paper ballots. Manship adds that Beals’ alleged neglect of her duties should be investigated by the “City of Richmond Grand Jury” and requests that a grand jury investigate

the integrity of electronic voting machines that will be used in upcoming elections.*

As an initial matter, we deny the petition to the extent it seeks an injunction or to initiate grand jury proceedings because neither remedy falls within this Court's limited original jurisdiction. *See* Va. Const. art. VI, § 1 (defining the limited areas in which this Court may exercise original jurisdiction and proclaiming that all other jurisdiction shall be appellate). Further, we deny the petition to the extent it seeks a writ of prohibition because the writ is traditionally issued by a superior court to an inferior court "to restrain the latter from excess of jurisdiction." *Howell v. McAuliffe*, 292 Va. 320, 353 n.19 (2016) (internal quotation marks and citation omitted). Although a writ of prohibition "may issue to restrain a quasi judicial body from attempting to exceed its judicial powers, or attempting to usurp unauthorized judicial powers," Manship has not alleged facts indicating Commissioner Beals is operating in a quasi judicial capacity or, even if she is, that she is exceeding her authority. *Bee Hive Mining Co. v. Indus. Comm'n of Va.*, 144 Va. 240, 242-43 (1926). Accordingly, prohibition does not lie.

Manship also fails to demonstrate his entitlement to a writ of mandamus. Mandamus is "an extraordinary remedy employed to compel a public official to perform a purely ministerial duty imposed upon him by law." *Howell*, 292 Va. at 351 (internal quotation marks and citation omitted). "A ministerial act is an act that one performs in obedience to a legal mandate and in a prescribed manner, without regard to his own judgment as to the propriety of the act to be done." *Id.* (internal quotation marks and citation omitted). A petitioner seeking a writ of mandamus must identify "a clear and unequivocal duty of a public official to perform the act in question." *Smith v. Richmond Newspapers, Inc.*, 261 Va. 113, 118 (2001); *see Legum v. Harris*, 205 Va. 99, 102 (1964) ("It is essential to the issuance of a writ of mandamus that the legal right of the plaintiff . . . to the performance of the particular act, sought to be compelled, be clear, specific, and complete.") (internal quotation marks and citation omitted).

Here, Manship asserts Commissioner Beals is neglecting her duty under Code § 24.2-629(B) to ensure that the voting machines meet the statute's requirements. However, Code § 24.2-629(B) governs the Board's actions and imposes no duty on Commissioner Beals, who is not a member of the Board. *See* Code § 24.2-629(B) (providing that "[t]he Board may approve

* Although Manship also requests that a writ of mandamus issue against the Board, he has not named the Board or any of its members as respondents.

any kind of electronic voting system that meets” certain criteria). Further, to the extent Code § 24.2-629(B) imposes any duty on the Board with respect to its approval of voting systems, it is not a ministerial duty that can be controlled by mandamus. *See Umstattd v. Centex Homes, G.P.*, 274 Va. 541, 546 (2007) (“Where the official duty involves the necessity on the part of the officer to make some investigation, to examine evidence and form his judgment thereon, mandamus will not be awarded to compel performance of the duty.”); *Fleenor v. Dorton*, 187 Va. 659, 662-64 (1948) (explaining mandamus could compel a registrar to provide a citizen with an adequate opportunity to register to vote but it could not direct the registrar’s determination of whether the registrant actually met the several qualifications for being enrolled as a voter).

The only other duty Manship contends Beals has abjured is her purported duty under Code § 24.2-103 to ensure “legality and purity in all elections” and to “ensure that major risks to election integrity are . . . addressed as necessary to promote election uniformity, legality and purity.” However, any duty Code § 24.2-103 places on Commissioner Beals to work with the Board to promote election integrity is not ministerial such that it can be compelled by mandamus. *See Umstattd*, 274 Va. at 546; *Brd. of Sup’rs v. Combs*, 160 Va. 487, 496 (1933) (a mandamus petitioner “must show a clear legal right to have the duty sought to have coerced, *done in the manner specified in the application and by the defendant*”) (internal quotation marks omitted and emphasis in original).

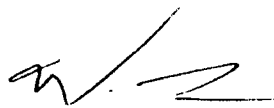
Accordingly, the petition is dismissed.

A Copy,

Teste:

By:

Muriel-Theresa Pitney, Clerk

A handwritten signature in black ink, appearing to be 'M. Pitney', written over a horizontal line.

Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**